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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

Estate of LAURA MARIE LOWRIE, Deceased. _____ LYNELLE L. GOODREAU, Petitioner and Respondent, v. SHELDON LAWRENCE LOWRIE, as Trustee, etc., Objector and Appellant.	B159305 (Los Angeles County Super. Ct. No. BP064664)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ernest George Williams, Judge. Affirmed.

Law Offices of Philip Kaufler and Philip Kaufler, for Petitioner and Respondent.

Michael Robert Bassin, for Objector and Appellant.

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* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of sections IIIB, IIIC, IIID, IIIE, and IIIF.

I.

INTRODUCTION

In this case, a granddaughter accuses her uncle of financial abuse, isolation, and neglect constituting elder abuse of her grandmother.

In the published sections of this opinion (sections I, II, IIIA, and IV) we hold that the granddaughter has standing to bring this elder abuse civil lawsuit. (Welf. & Inst. Code, § 15657, subd. (d).) In unpublished portions of this opinion (sections IIIB, IIIC, IIID, IIIE, and IIIF) we hold there is substantial evidence to support the findings of elder abuse, there is substantial evidence to support the damages awarded, and there is no procedural impediment to the imposition of punitive damages.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The parties and decedent's estate plan.*

Laura Marie Lowrie (decedent) had three children, all of whom are still living: Norma Goodreau, Alan Lowrie, and appellant Sheldon Lawrence Lowrie (Sheldon). Decedent had six grandchildren, including respondent Lynelle Goodreau (Lynelle) who was the eldest daughter of Norma Goodreau.[1]

Decedent's husband died in 1986, leaving to decedent gold coins, cash in bank accounts, a number of pieces of commercial property, and two single family residences located in Burbank, California. Decedent's husband also left to decedent an airplane parts business, SAL Instruments (SAL), located in Burbank. Decedent lived in the residence located on Kenwood Street. The second residence, on Edison Boulevard, was the house where Lynelle had lived with her grandparents when Lynelle was an infant. During this time, Lynelle and decedent developed a special bond.

After his father died, Sheldon started to run SAL. Alan assisted by doing the bookkeeping.

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[1] To avoid confusion, we use the first names. We mean no disrespect thereby.

Decedent executed a will in 1988 and a revised will in January 1989. On March 20, 1989, decedent reformulated her estate plan and executed a will (pour over) and a trust, the effect of which placed most of her real and personal property in trust. On March 19, 1992, decedent, amended the trust.

In the March 1989, estate documents, Sheldon was named as the executor, Lynelle was designated as the successor executor, decedent was designated as the trustee, Sheldon was designated as the first successor trustee, and Lynelle was designated as the second successor trustee. Additionally, Alan Lowrie and Norma Goodreau each were bequeathed the sum of $10,000 and Lynelle was to receive the Edison Boulevard residence. Sheldon was bequeathed the remainder of the estate (which would be the bulk of the property), and if Sheldon did not survive decedent, Lynelle was to receive the remainder.[2] The 1992 trust amendment was a one-page document which deleted the bequest to Lynelle of the house and replaced it with a monetary bequest of $10,000.

Unbeknown to others, decedent transferred the Edison Boulevard residence and the Kenwood Street residence to Sheldon in 1993 and 1995, respectively. In 1993, decedent transferred all of her personal property to Sheldon.

In August 1997, decedent resigned as trustee of her trust and Sheldon became trustee.

Decedent died on August 13, 1999, at the age of 89. At the time of her death, decedent's estate was worth approximately $1 million.

B. *Procedure.*

1. *The petition.*

On November 1, 2000, Lynelle filed a multiple-part petition (BP064664) challenging the March 19, 1992, trust amendment, seeking findings and damages for

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[2] Section 3.4 of the 1989 trust provides: "The trustee shall distribute the remainder of the trust estate to settlor's son, [Sheldon Lowrie], if he survives settlor. If he does not survive settlor, the trustee shall distribute the remainder of the trust estate to settlor's granddaughter, [Lynelle Goodreau]."

elder abuse, and requesting an order pursuant to Probate Code section 259 disinheriting Sheldon. Lynelle contended, among other allegations, that Sheldon exploited his relationship with decedent, and through manipulation, fraud and undue influence enticed decedent to gift him property and to change her estate plan so Sheldon would receive substantially all of decedent's assets. Further, Sheldon abused decedent physically and financially, and intentionally isolated decedent. Lynelle alleged that over the years, "Sheldon isolated Decedent from her two other children, her five grandchildren and from most of the outside world. Sheldon intentionally prevented Decedent from seeing or speaking with family members and other people and denied family members and others access to Decedent's house by among others: duct taping her telephones so that she could not receive or make telephone calls; by locking her metal security door from the outside so that decedent could not open her front door to leave the house and so that she could not allow in visitors such as family members; and by affixing a sign to her door which stated: 'DAY SLEEPER, DO NOT DISTURB!! NO SOCIAL WORKERS. NO PEDDLERS. WILL NOT ANSWER DOOR.' " The complaint also alleged that Sheldon denied and delayed medical care to decedent and failed to assist her with personal hygiene.

Among other relief, Lynelle sought to void the 1992 trust amendment, to set aside the transfer of real property, compensatory and punitive damages, a finding pursuant to Probate Code section 259 that Sheldon was deemed to have predeceased decedent and thus was not entitled to inherit the remainder of decedent's estate, imposition of a constructive trust, attorney fees, and costs.

2. *The trial, the judgment, and the appeal.*

Prior to trial, the trial court rejected Sheldon's argument that Lynelle had no standing to bring this case for elder abuse.

A bifurcated trial was held before the court. At the end of the first phase of the trial, the court found, by clear and convincing evidence, that Sheldon was guilty of elder abuse by reason of neglect, isolation, and financial abuse. In that Sheldon was found to

be liable for elder abuse, the trial court found that Sheldon was disinherited from decedent's estate (Prob. Code, § 259). The trial court made a specific finding that Sheldon acted with recklessness, oppression, fraud and malice, entitling Lynelle to attorney fees and punitive damages. (Welf. & Inst. Code, § 15657; Civ. Code, § 3294.) Damages were awarded to Lynelle as follows: $250,000 for pain and suffering; $665,623 for financial abuse; attorney's fees to be determined upon written motion; and punitive damages to be based upon proof of Sheldon's net worth.

Thereafter, a hearing before the court was held on the issues of attorney fees, costs, and punitive damages. The trial court found that "during the pendency of this action, [Sheldon] intentionally and systematically liquidated virtually all of his assets and the assets of the trust (of which [Sheldon] was the sole beneficiary) prior to completion of this trial. . . so that his assets would be unavailable for execution by [Lynelle] as a potential judgment creditor of [Sheldon]." The trial court awarded Lynelle $392,621.20 in attorney fees, $32,406.37, in costs, and $50,000 for punitive damages.

A judgment was entered awarding $665,623 for financial abuse, $250,000 for pain and suffering, $392,621.20 in attorney fees, $32,406.37 in costs, and $50,000 for punitive damages, disinheriting Sheldon from decedent's trust (Prob. Code, § 259), and other relief. Sheldon appeals.

III.

DISCUSSION

A. *Lynelle has standing to pursue this elder abuse case.*

Sheldon asserts that Lynelle has no standing to bring this elder abuse case. This argument ignores the legislative purpose of the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq., the Elder Abuse Act) and Probate Code section 259. If accepted, this argument would create opportunities for abusers to benefit from their wrongful conduct.

1. *The Elder Abuse Act and the Standing Provision, Welfare and Institutions Code section 15657.3, subdivision (d).*

"The purpose of the [Elder Abuse Act, (Welf. & Inst. Code, § 15600 et seq.)] is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect." (*Delaney v. Baker* (1999) 20 Cal.4th 23, 33; Buhai & Gilliam, *Honor Thy Mother and Father: Preventing Elder Abuse Through Education and Litigation* (2003) 36 Loyola L.A. L.Rev. 565, 569.)

Originally, the Elder Abuse Act was designed to encourage the reporting of abuse and neglect of elders and dependent adults. (*Delaney v. Baker, supra,* 20 Cal.4th at p. 33; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, __ [11 Cal.Rptr.3d 222, 226]; *ARA Living Centers-Pacific, Inc. v. Superior Court* (1993) 18 Cal.App.4th 1556, 1559 (*ARA Living Centers*).) It also provided for criminal prosecution of such cases. (E.g., Pen. Code, § 368.) However, elder abuse lawsuits were seldom pursued as few attorneys would handle the cases, partially because survival statutes did not permit compensation if the elder died before a verdict was rendered.[3] Then, the Legislature shifted the focus. The statutory scheme was modified to provide incentives for private, civil enforcement through lawsuits against elder abuse and neglect. (*Covenant Care, Inc.*

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[3] Survival statutes (Code Civ. Proc., § 377.20 et seq.) seek damages for a decedent's injuries and harm sustained prior to the death of the decedent. Recovery becomes an asset of the decedent's estate. (Cal. Elder Law Litigation: An Advocate's Guide (Cont.Ed.Bar 2003) § 6.46, p. 411; Ross, Cal. Practice Guide, Probate (The Rutter Group 2003) [¶] 15:280, p. 15-78 et seq.) In general, survival statutes do not provide recovery of pain and suffering if the plaintiff dies. (Ross, Cal. Practice Guide, Probate, *supra,* [¶] 15:284, p. 15-78.2; Cal. Elder Law Litigation: An Advocate's Guide, *supra,* § 6.47, pp. 411-412.)

Survival statutes are not to be confused with wrongful death statutes (Code Civ. Proc., § 377.60 et seq.) that prescribe actions that belong to the "decedent's heirs and other specified relations [] and [are] meant to compensate them for their own losses resulting from the decedent's death." (Cal. Elder Law Litigation: An Advocate's Guide, *supra,* § 6.46, p. 411; accord, Ross, Cal. Practice Guide, Probate, *supra,* [¶][¶] 15:280, p. 15-78, 15:292, p. 15-78.13 et seq.)

v. Superior Court, supra, at p. __ [11 Cal.Rptr.3d at pp. 226, 231]; *Delaney v. Baker, supra,* at p. 33; *ARA Living Centers, supra,* at p. 1560.)

Subject to statutory criteria and limitations, the statutory scheme now permits heightened remedies. These include pain and suffering damages even after the abused elder dies, punitive damages, and attorney fee awards. (Welf. & Inst. Code, § 15657; *Covenant Care, Inc. v. Superior Court, supra,* 32 Cal.4th at p. __ [11 Cal.Rptr.3d at pp. 226-227]; *Delaney v. Baker, supra,* 20 Cal.4th at pp. 33, 35; Moskowitz, *Golden Age in the Golden State: Contemporary Legal Developments in Elder Abuse and Neglect* (2003) 36 Loyola L.A. L.Rev. 589, 605-606.)[4]

Welfare and Institutions Code section 15657.3, subdivision (d), delineates who has standing to bring an elder abuse lawsuit *after the death* of an elder or dependent adult. Welfare and Institutions Code section 15657.3, subdivision (d) states: "Upon petition, after the death of the elder or dependent adult, the right to maintain an action shall be transferred to the personal representative of the decedent, or if none, to the person or persons entitled to succeed to the decedent's estate."

The Legislature did not define the operative words in Welfare and Institutions Code section 15657.3, subdivision (d). However, when Welfare and Institutions Code section 15657.3 was added to the statutory scheme (Stats. 1991, ch. 774 (Sen. Bill No. 679), § 3) the Legislature specified that the Elder Abuse Act was intended to "enable *interested persons* to engage attorneys to take up the cause of abused elderly persons and

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[4] "In order to obtain the [Elder Abuse] Act's heightened remedies, a plaintiff must allege conduct essentially equivalent to conduct that would support recovery of punitive damages. (Compare Welf. & Inst. Code, § 15657 [requiring 'clear and convincing evidence that a defendant is liable for' elder abuse and 'has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse'] with Civ. Code, § 3294, subd. (a) [requiring 'clear and convincing evidence' that the defendant has been guilty of oppression, fraud, or malice].)" (*Covenant Care, Inc. v. Superior Court, supra,* 32 Cal.4th at p. __ [11 Cal.Rptr.3d at p. 234]; Buhai & Gilliam, *Honor Thy Mother and Father: Preventing Elder Abuse Through Education and Litigation, supra,* 36 Loyola L.A. L.Rev. at pp. 570-571.)

dependent adults." (Welf. & Inst. Code, § 15600, subd. (j), italics added; added by Stats.1991, ch. 774 (Sen. Bill No. 679), § 2.) This statement of legislative intent suggests the Legislature intended a broad definition of standing in the context of elder abuse cases.[5]

2. *Lynelle has standing.*

Sheldon argues Lynelle does not have standing because: (1) under the trust he is the named trustee and thus, decedent's "personal representative" (citing Prob. Code, § 58)[6]; and, (2) Lynelle is not a person "entitled to succeed to the decedent's estate" because she does not succeed to decedent's estate under the laws of intestate succession (Prob. Code, § 6402)[7], but rather, Lynelle is simply a beneficiary who was bequeathed $10,000. Sheldon points to provisions of the survival statutes (Code Civ. Proc.,

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[5] There are a number of definitions of "interested person" in the Probate Code (e.g., Prob. Code, § 1424 [with regard to guardianship and conservatorship law]; Prob. Code, § 354 [for purposes of the fiduciaries' wartime substitution law]; Prob. Code, § 7280 [with regard to the United States Government]), but none is contained in the Elder Abuse Act.

[6] Probate Code section 58 defines "personal representative" as "executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status."

[7] Under the laws of intestate succession, a grandchild inherits only if there are no living children. (Prob. Code, § 6402.) Here, in addition to Sheldon, decedent was survived by two living children (Norma and Alan).

§ 377.30)[8] and the wrongful death statutes (Code Civ. Proc., § 377.60.),[9] as well as the definition of "decedent's successor in interest" prescribed for those purposes. (Code Civ. Proc., § 377.11.)[10] These statutes use language similar to that in Welfare and Institutions Code section 15657.3. According to Sheldon, only Norma and Alan, decedent's other surviving children, have standing to bring this elder abuse case. (See fn. 7.) However, establishing a uniform definition of terms throughout the codified laws is less important than effectuating the purpose of the legislative scheme. (*Covenant Care, Inc. v. Superior Court, supra,* 32 Cal.4th at p. __ [11 Cal.Rptr.3d at p. 229].)

Sheldon's argument ignores Probate Code section 259 and the purpose of the Elder Abuse Act.

Probate Code section 259 is a forfeiture statute that deems abusers of elders or dependent adults to have predeceased a deceased, abused elder or dependent adult.[11]

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[8] Code of Civil Procedure section 377.30 reads in part: "A cause of action that survives the death of the person . . . may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest."

[9] Code of Civil Procedure section 377.60 reads in part: "A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent's personal representative on their behalf: [¶] (a) The decedent's surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession."

[10] Code of Civil Procedure section 377.11 reads: "For purposes of this chapter, 'decedent's successor in interest' means the beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action."

[11] Probate Code section 259 reads in part:

"(a) Any person shall be deemed to have predeceased a decedent to the extent provided in subdivision (c) where all of the following apply:

The purpose of Probate Code section 259 was to deter the abuse of elders by prohibiting abusers from benefiting from the abuse. (Note, *Extinguishing Inheritance Rights: California Breaks New Ground in the Fight Against Elder Abuse But Fails to Build an Effective Foundation* (2001) 2 Hastings L.J. 537, 569; Civ. Code, § 3517 ["No one can take advantage of his own wrong."]; cf. Prob. Code, § 250 [killer of decedent not entitled to benefit under decedent's will or trust].) Probate Code section 259 was enacted, like other forfeiture statutes, to produce a fair and just result. By enacting this statute, the Legislature hoped that the threat of extinguishing inheritance rights, and the

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"(1) It has been proven by clear and convincing evidence that the person is liable for physical abuse, neglect, or fiduciary abuse of the decedent, who was an elder or dependent adult.

"(2) The person is found to have acted in bad faith.

"(3) The person has been found to have been reckless, oppressive, fraudulent, or malicious in the commission of any of these acts upon the decedent.

"(4) The decedent, at the time those acts occurred and thereafter until the time of his or her death, has been found to have been substantially unable to manage his or her financial resources or to resist fraud or undue influence.

"(b) Any person shall be deemed to have predeceased a decedent to the extent provided in subdivision (c) if that person has been convicted of a violation of Section 236 of the Penal Code or any offense described in Section 368 of the Penal Code.

"(c) Any person found liable under subdivision (a) or convicted under subdivision (b) shall not (1) receive any property, damages, or costs that are awarded to the decedent's estate in an action described in subdivision (a) or (b), whether that person's entitlement is under a will, a trust, or the laws of intestacy; or (2) serve as a fiduciary as defined in Section 39, if the instrument nominating or appointing that person was executed during the period when the decedent was substantially unable to manage his or her financial resources or resist fraud or undue influence. This section shall not apply to a decedent who, at any time following the act or acts described in paragraph (1) of subdivision (a), or the act or acts described in subdivision (b), was substantially able to manage his or her financial resources and to resist fraud or undue influence within the meaning of subdivision (b) of Section 1801 of the Probate Code and subdivision (b) of Section 39 of the Civil Code."

financial incentive to others to report abuse, would deter abuse. (Moskowitz, *Golden Age in the Golden State: Contemporary Legal Developments in Elder Abuse and Neglect, supra,* 36 Loyola L.A. L.Rev. at pp. 653-656; Note, *supra,* 2 Hastings L.J. at pp. 572-573.)

According to decedent's estate plan, if Sheldon predeceased decedent, Lynelle would become the successor trustee and the successor beneficiary to the remainder. Thus, Lynelle would become the person entitled to succeed to decedent's estate and Lynelle would have standing to bring this case. (Prob. Code, § 48, subd. (b) ["interested person" determined according to particular purposes of proceeding]; Prob. Code, § 24, subd. (b) [as relates to trust, beneficiary means persons who have present, future, or contingent interest]; Prob. Code, § 250, subd. (b)(3) [provisions in will or trust nominating killer as executor, trustee, guardian, or conservator interpreted as if killer predeceased decedent]; *Estate of Plaut* (1945) 27 Cal.2d 424, 428-429 [beneficiary under earlier will interested party and may contest later will; prima facie showing of contestant's contingent interest sufficient]; *Estate of O'Brien* (1966) 246 Cal.App.2d 788 [person named as a beneficiary under a later will whose interest may be impaired by probating an earlier will is an "interested person" who has pecuniary interest in estate that may be impaired or defeated by probate of the earlier will or benefited by having it set aside].)

Standing for purposes of the Elder Abuse Act must be analyzed in a manner that induces interested persons to report elder abuse and to file lawsuits against elder abuse and neglect. In this way, the victimized will be protected. Here, Lynelle's expectancy, i.e., her contingent interest, provides her with a strong incentive to pursue this action and gives her standing.

Sheldon argues Probate Code section 259 is irrelevant because disinheritance under the statute occurs only *after* a person is found to have been guilty of elder abuse, but standing must exist *at the time* the action is filed. (Code Civ. Proc., § 430.10; [demurrer]; *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 1004

[complaint filed by person without standing may be challenged by demurrer]; e.g., *Estate of Lind* (1989) 209 Cal.App.3d 1424.) Were we to accept this rigid view, the purposes of the Elder Abuse Act could be eviscerated. Any definition given to Welfare and Institutions Code section 15657.3, subdivision (d) must be sufficiently elastic to fulfill the purposes of the Elder Abuse Act. A decision as to whether a person has standing may be intertwined with other issues in elder abuse cases. This approach is consistent with the one taken to determine who is an interested person entitled to file petitions for probate. (Prob. Code, § 48 [defining standing to file probate petition requires flexible approach]; Prob. Code, § 8000, subd. (a); *Arman v. Bank of America* (1999) 74 Cal.App.4th 697, 701 [under the Probate Code, who is an interested person for purposes of standing is fluid concept and is often necessary to resolve the substantive claim to the parties' relationship prior to deciding standing issue]; 2 Cal. Civil Practice: Probate & Trust Proceedings (2000) Standing, § 10:8, p. 10 [issue of standing in probate proceeding ordinarily determined before other issues, but court not required to follow this procedure].)

Sheldon's assertion that only he (as the trustee and personal representative) and Norma and Alan (as decedent's children) have standing is based upon an unduly restrictive interpretation leading to an unwarranted result.

"Elders are uniquely vulnerable to abuse because . . . they face advancing frailty, deterioration of mental capacity, and increasing reliance for assistance upon the families they raised." (Note, *A New Approach to Fighting Elder Abuse in America, supra,* 2 Hastings L.J. at pp. 571-572, fn. omitted..) Elders frequently relinquish control to those who have gained their trust, becoming emotionally and financially dependent. In such circumstances, abusers become the elder or dependent adult's trustee or executor and primary beneficiary. For example, most financial abuse is perpetrated by one person, usually a family member, or other trusted person. (Finberg, *Financial Abuse of the Elderly in California* (2003) 36 Loyola L.A. L.Rev. 667.)

Courts must interpret the standing provision in Welfare and Institutions Code section 15657.3, subdivision (d) to deter, not encourage such abuse. If abusers gain

control of an estate, they may not use a restrictive interpretation of standing as an escape hatch. In order to effectuate the purposes of the Elder Abuse Act and Probate Code section 259, standing must be given to Lynelle, who is the successor representative of decedent's estate. Any other conclusion would discourage interested persons from bringing elder abuse lawsuits and would ignore the legislative scheme.

Granting Lynelle standing is also supported by the analogous case of *Olson v. Toy* (1996) 46 Cal.App.4th 818. In *Olson,* plaintiffs brought an action to declare a trust invalid alleging that "defendants, using undue influence, took advantage of decedent's senility and induced her to execute a trust in their favor." (*Id.* at p. 823.) Plaintiffs were heirs at law and entitled to inherit under decedent's will. Defendant Toy was the decedent's personal representative and the trustee of the trust. (*Id.* at p. 824.) Although the general rule was that an executor and administrator was the proper party to sue on behalf of the estate (*id.* at pp. 823-824), *Olson* held that the plaintiffs had standing. *Olson* reasoned as follows, "Toy could hardly be expected on behalf of the estate to initiate an action to declare invalid the trust which she administers as trustee." (*Id.* at p. 824.) Likewise, Sheldon, as the trustee and major beneficiary of the trust, cannot be expected to bring an elder abuse lawsuit against himself.

Lynelle has standing to pursue the elder abuse case against Sheldon.[12]

B. *There is substantial evidence to support the findings of elder abuse.*

The trial court found, by clear and convincing evidence that there was financial abuse, isolation, and neglect. Sheldon contends there was no substantial evidence to support these findings and there was no substantial evidence to support the calculation of damages. These contentions are not persuasive.

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[12] As Lynelle has standing, we need not address other situations that might arise, nor must we further define the parameters of standing in Welfare and Institutions Code section 15657.3, subdivision (d). Thus, we need not address whether Norma, Alan, or anyone else also has standing to bring this case.

1. *Standard of review.*

"When considering a claim of insufficient evidence on appeal, we do not reweigh the evidence, but rather determine whether, after resolving all conflicts favorably to the prevailing party, and according the prevailing party the benefit of all reasonable inferences, there is substantial evidence to support the judgment. [Citation.]" (*Scott v. Pacific Gas & Electric Co.* (1995) 11 Cal.4th 454, 465, disapproved on other grounds in *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 352, fn. 17.) We "view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. [Citation.]" (*Ninety Nine Investments, Ltd. v. Overseas Courier Service (Singapore) Private, Ltd.* 113 Cal.App.4th 1118, 1127.)

"Where the trial court has determined that a party has met the 'clear and convincing' burden, that heavy evidentiary standard then disappears. 'On appeal, the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding appellant's evidence, however strong.' [Citation.]" (*Ensworth v. Mullvain* (1990) 224 Cal.App.3d 1105, 1111, fn. 2.)

Most of the arguments presented by Sheldon disregard the burden of proof, fail to recognize that it is our responsibility to evaluate the evidence in the light most favorable to the findings, and suggest that we should re-weigh the evidence. Sheldon fails to acknowledge that all credibility decisions were for the trial court, which was free to accept the evidence presented by Lynelle.[13] (Cf. *Hongsathavij v. Queen of Angels etc.*

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[13] Lynelle, her mother (Norma), Lynelle's two sisters (Christine Goodreau and Nadine Goodreau), Lynelle's uncle Alan, Alan's two daughters (Kellie Lowrie and Julie Lowrie), a social worker from the Los Angeles adult protective services (Sergey Manucharyan), and a tenant in the Edison Street residence (Kimberly Bodtcher), all testified for Lynelle.

Medical Center (1998) 62 Cal.App.4th 1123, 1137 [findings not upheld if evidence is inherently improbable].)

Given the standard of review, our discussion of the evidence omits the evidence that might have supported contrary findings.

2. *Definition of elder abuse.*

Welfare and Institutions Code section 15610.07 states that " '[a]buse of an elder or a dependent adult' means either of the following: [¶] (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. [¶] (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering."

3. *There is substantial evidence of financial abuse.*

" '[F]inancial abuse' within the meaning of the [Elder Abuse] Act occurs when a third party who holds or controls money or property belonging to or held in trust for an elder or dependent adult: [¶] Takes, secretes or appropriates the money or property and applies it to any wrongful use or with the intent to defraud; and/or [¶] Refuses in bad faith to honor the demand of an elder/dependent adult or his or her representative (i.e., estate conservator or attorney-in-fact) for delivery of property belonging to the elder/dependent adult." (Ross, Cal. Practice Guide, Probate, *supra,* [¶] 15:284.10h, pp. 15-78.5 – 15-78.6, citing Welf. & Inst., § 15610.30.)[14]

Testifying on behalf of Sheldon were Sheldon, three of his friends (Michael Rankin, Dave Gibson, and Robert Wivell), three of decedent's neighbors (Kathleen Sharp, Paul Lukasiak, and Mary Ramsey), decedent's mailman (Richard Williams), Sheldon's step-daughter (Olivia Baysinger), Sheldon's wife (Vicki Lowrie), Sheldon's daughter (Alicia Whitson), Sheldon's ex-wife (Marilyn Jones), and the attorney (Elaine Ewen) who had represented Sheldon and decedent.

14 Welfare and Institutions Code section 15610.30 reads:

"(a) 'Financial abuse' of an elder or dependent adult occurs when a person or entity does any of the following:

Here, the trial court found by clear and convincing evidence that "Sheldon took, secreted, appropriated, or retained monies totaling $665,623 belonging to [decedent], her business, and/or her living trust by: [¶] a) taking all of the business revenue from SAL, a business owned by [decedent] for herself. [¶] b) withdrawing for himself, all of [decedent's] money from her various savings accounts." The trial court also found by clear and convincing evidence that "Sheldon accomplished [this] conversion of [decedent's] money, in part, by having his name added to [decedent's] accounts, by directing the bank statements to himself, . . . and by not disclosing to [decedent] that he

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"(1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

"(2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

"(b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.

"(1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.

"(2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).

"(c) For purposes of this section, 'representative' means a person or entity that is either of the following:

"(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

"(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney."

had taken her money. [¶] [] Sheldon also convinced [decedent] that she was poor and living off of social security, notwithstanding that in fact she was a millionaire."

These findings were supported by the following evidence.

Upon the death of decedent's husband in 1986, decedent inherited a business, SAL. Thereafter, Sheldon handled the finances of decedent and SAL. Sheldon was added as a co-signer on the SAL bank account and decedent gave him a general power of attorney. Eventually the bank statements went to Sheldon's home.

Sheldon's brother (Alan) aided by doing the SAL bookkeeping. In 1988, Sheldon assisted in securing a restraining order that precluded Alan from seeing decedent. This enabled Sheldon to take control of decedent's finances.

Decedent's income came from various sources, including rental income, income on a note, income from SAL, and income from the sale of properties. Sheldon sold trust property, stole the money earned on the sale of trust property, emptied bank accounts, stole decedent's life savings, and stole trust funds.

Sheldon destroyed or refused to produce financial records, including his personal bank or credit card records, and those from SAL. Exhibits 59, 60, 61, 62, 64, 65, 66, and 67 were financial records obtained by Lynelle. Sheldon's thefts were shown by these financial records that were from decedent's personal accounts, decedent's trust accounts, and SAL accounts. The financial records included withdrawal slips and checks demonstrating that money from decedent's personal accounts and from SAL accounts went directly to Sheldon. The records also showed that Sheldon depleted these accounts. For example, one account was opened with a $100,000 deposit and thereafter was reduced to a zero balance.

By the time of the trial, hundreds of thousands of dollars had been withdrawn from the accounts. The balances on many of the accounts went to zero, and others were minimal. While the final use of most of the money could not be traced, Sheldon used some of these funds to purchase seven or eight antique automobiles. Sheldon also used SAL accounts to pay his personal credit card bills.

Sheldon failed to explain the numerous large withdrawals to himself, failed to explain where the money went, failed to substantiate his claims that the money flowed back to decedent, and admitted that he did not keep an accounting of the money he had taken from the business. Sheldon testified that there was no need to maintain an accounting of the business finances because the business was going to be his one day. Sheldon also testified that he was told he could destroy SAL records after the business was closed in 1997. Sheldon either claimed he did not remember whether he took funds for his personal use or denied doing so.

Over the years, Sheldon received as gifts from decedent the Kenwood Street residence, the Edison Boulevard residence, and all of decedent's personal property.

During the time Sheldon withdrew money from decedent's accounts, decedent was denied the use of her money. Decedent would not replace a broken table, a broken couch, or a broken television. She would not buy presents for her family and would not pay someone to help her take care of her garden. Decedent told others she could not afford such expenses because she was living off social security.

The sum of $665,623 was ascertained by adding together all withdrawals made by Sheldon from the bank accounts belonging to decedent, her business, and her living trust, as well as the amounts of the checks made payable to Sheldon or used for his benefit.[15]

Sheldon asserts that Lynelle did not meet her burden of proof because she did not trace all of the funds. However, Sheldon was decedent's agent and fiduciary, and after August 1997, trustee. Thus, Sheldon had the obligation to maintain accurate books and records. Having failed to do so, the burden was on him to explain the disposition of the funds. (*Kennard v. Glick* (1960) 183 Cal.App.2d 246, 250-251; *Bone v. Hayes* (1908) 154 Cal. 759, 766 [all presumptions construed against trustee who failed to provide

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15 Sheldon argues this was an inappropriate way to analyze the financial data. For example, Sheldon suggests that when one bank account was closed, the money from that account was rolled over and deposited into another account.

accounting].) Because Sheldon breached his fiduciary obligations, the gross receipts were properly used to compute the funds taken. (*Rosenfeld, Meyer & Susman v. Cohen* (1987) 191 Cal.App.3d 1035, 1051.)

Contrary to Sheldon's argument, the fact that he was a joint signatory on the bank accounts does not change the analysis. Sheldon was acting as a fiduciary. The money in the accounts was decedent's, not Sheldon's. The trial court did not find credible Sheldon's claim that he was entitled to withdraw the funds, without restriction or for his own personal benefit. (*Lail v. Lail* (1955) 133 Cal.App.2d 610 [father placed his own money into joint bank account with one son; misappropriation when that son withdrew monies from the account even though son was a joint signator]; *Evangelho v. Presoto* (1998) 67 Cal.App.4th 615 [decedent placed one of her six children on bank account as joint tenant, that child used account for personal expenses; amount of assets in account declined substantially; after decedent died, other children could force the one sibling to account for funds withdrawn]; Prob. Code, § 5301, subd. (a) [during lifetime, account belongs to parties in proportion to net contributions made by each unless there is clear and convincing evidence of different intent].)

Sheldon suggests this evidence was not substantial evidence because Lynelle did not present any evidence as to how the money was spent and there was no evidence that decedent did not benefit from the use of the money. This argument is disingenuous as Sheldon's destruction of the records precluded a complete examination and analysis of the records. Further, as discussed above, Sheldon had the burden to prove that the funds were used properly. (*Rosenfeld, Meyer & Susman v. Cohen, supra,* 191 Cal.App.3d at p. 1051.)

This evidence supports the trial court's findings that there was financial abuse.

C. *There is substantial evidence of isolation.*

"Isolation" includes preventing an elder from receiving mail or telephone calls, telling a prospective visitor that an elder or dependent adult is not present, false

imprisonment, and physically restraining an elder for the purpose of preventing an elder from meeting with visitors. (Welf. & Inst. Code, § 15610.43.)[16]

The trial court found by clear and convincing evidence that "Sheldon deliberately isolated [decedent] from other family members and the public by duct taping her telephones so that she could not receive or make telephone calls[,] . . . affixing a sign to [decedent's] front door[, obtaining] a restraining order . . . against his brother Alan Lowrie[, employing] an attorney to threaten restraining orders against other family members[, concealing] from family members that [decedent had been] hospitalized[, and

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16 Welfare and Institutions Code section 15610.43 defines isolation. It reads:

"(a) 'Isolation' means any of the following:

"(1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.

"(2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.

"(3) False imprisonment, as defined in Section 236 of the Penal Code.

"(4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.

"(b) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.

"(c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety."

locking decedent's] front door . . . from the outside so as to prevent family members from visiting . . . ."

The evidence showed the following.

Sheldon kept decedent from her two other children, her grandchildren, and much of the outside world.

Sheldon taped a sign he had written to decedent's front door that read: "DAY SLEEPER, DO NOT DISTURB!! NO SOCIAL WORKERS. NO PEDDLERS. WILL NOT ANSWER DOOR."

Decedent told visitors they had to leave because Sheldon would be upset if he saw them there. If visitors were in decedent's home when Sheldon was present, Sheldon did not permit them to be alone with decedent and he dominated conversations.

Decedent did not often leave her home. If decedent did leave her house, she was apprehensive and said she had to go home quickly because Sheldon took care of her.

Sheldon instilled fear in decedent and made slanderous statements about other family members so decedent would mistrust them.

As the years passed, decedent became more withdrawn. The drapes on her home were closed. Decedent seldom answered her telephone. Duct tape was seen holding down the receiver on the phone.

Sheldon locked the metal security door on decedent's front door from the outside. This prevented decedent from leaving through the front door, precluded visitors entry through the front door, and stopped decedent from unlocking the door when Lynelle or others tried to visit. Visitors were forced to talk to decedent through the metal screen door. Sheldon told decedent not to allow anyone in the house as decedent would get sick. This was the same reason decedent provided as to why Sheldon changed the front door locks.

Sheldon assisted in obtaining a restraining order against Alan. This made decedent more dependent upon Sheldon. It also made other family members fearful that such restraining orders would be obtained against them.

Decedent suffered a gall bladder attack that eventually resulted in her death. In an effort to conceal decedent from the rest of the family, Sheldon took decedent to a hospital in Valencia, rather than one close to her Burbank home. Family members located decedent in the hospital a month later, with the assistance of adult protective services.

Sheldon had his lawyer write a letter to decedent's nieces asking them to stop harassing decedent by making complaints to animal services and to adult protective services. The letter threatened that restraining orders would be obtained if they continued to persist. That same day, Sheldon had the lawyer write a letter to adult protective services attesting to the quality of care decedent was receiving. This letter stated that the lawyer could attest to decedent's good health, although decedent was in a coma at the time. Five days later, after decedent had been moved to a convalescent home, Sheldon instructed his lawyer to write a letter to the home stating that decedent did not want any other members of the family visiting.

Isolation even occurred after decedent had died. Sheldon refused to allow family members to make funeral arrangements. Sheldon contravened decedent's wishes to be buried next to her husband in a prepaid plot, and instead donated decedent's body for medical experimentation.

This evidence supports the trial court's findings of isolation.

D. *There is substantial evidence of neglect*.

" 'Neglect' of an elder or dependent adult means: [¶] The negligent failure of any person having the care or custody of an elder or dependent adult to exercise that degree of care a reasonable person in a like position would exercise; or [¶] An elder or dependent person's own negligent failure to exercise that degree of care a reasonable person in a like position would exercise." (Ross, Cal. Practice Guide, Probate, *supra,* [¶] 15:284.10j, p. 15-78.6, citing Welf. & Inst. Code, § 15610.57, subd. (a).) Neglect includes the "failure to: [¶] [a]ssist in personal hygiene; [¶] [p]rovide food, clothing, shelter or medical care; [¶] [p]rotect from health and safety hazards; [and] [¶] [p]revent malnutrition or dehydration." (Ross, Cal. Practice Guide, Probate, *supra,* [¶] 15:284.10k,

p. 15-78.6, citing Welf. & Inst. Code, § 15610.57, subd. (b)(1)-(4).) "In addition, neglect occurs when an elder or dependent adult fails to provide the foregoing needs for himself or herself due to ignorance, illiteracy, incompetence, mental limitation, substance abuse or poor health." (Ross, Cal. Practice Guide, Probate, *supra,* [¶] 15:285.10k, pp. 15-78.6 – 15-78.7*,* citing, Welf. & Inst. Code, § 15610.57, subd. (b)(5).)[17]

The trial court found, by clear and convincing evidence, that Sheldon had decedent's durable power of attorney for health care; Sheldon was paid to take care of decedent; decedent "was substantially unable to care for herself[;] [¶] . . . Sheldon failed to take care of [decedent's] personal needs by allowing [decedent] to live in an unsanitary [and dirty] house . . . with no fresh food in the refrigerator[;] [¶] . . . Sheldon . . . failed to

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17 Welfare and Institutions Code section 15610.57 reads:

"(a) 'Neglect' means either of the following:

"(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

"(2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

"(b) Neglect includes, but is not limited to, all of the following:

"(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

"(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

"(3) Failure to protect from health and safety hazards.

"(4) Failure to prevent malnutrition or dehydration.

"(5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health."

take care of [decedent] by allowing her to be unkempt . . . and by failing to assist [decedent] in personal hygiene[;] [¶] . . . Sheldon . . . failed to take [decedent] to the doctor, notwithstanding that she had become disabled from a fall that occurred three years prior to her death[; and] [¶] . . . Sheldon . . . delayed medical care to [decedent] during [her last illness] by taking her in critical condition to a hospital in Valencia instead of Burbank . . . ."[18]

The evidence produced was the following.

Sheldon was paid to take care of decedent's needs and he had decedent's power of attorney for health care.

Decedent's hair was matted, her toenails overgrown, she was filthy and disheveled, and she wore dirty nightgowns. Decedent's home was filthy, feces were splattered on the toilet, the home smelled of urine, fleas were on the carpet, and decedent's bed was soiled. The little food in the refrigerator consisted of sandwiches.

The family called adult protective services. In May 1999, decedent told an adult protective services representative that she could not remember the last time she saw a doctor. Sheldon denied decedent medical care. For example, when decedent fell and injured her knee in 1996, she was not taken to the doctor. This accident prevented decedent from walking easily, tending to her garden, picking up things, maintaining a clean house, or getting around. When confronted, Sheldon said there was no need to take decedent to the doctor because she was fine.

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18 Sheldon contends he could not be liable for neglect because he did not have the "care or custody" of decedent. The requirement of care and custody only applies to "neglect." (Welf. & Inst. Code, § 15610.57, subd. (a)(1).) A "care custodian" includes "person providing health services or social services to elders or dependent adults." (Welf. & Inst. Code, § 15610.17, subd. (y); cf. Welf. & Inst. Code, § 15610.37 [defining health practitioners].) However, Sheldon was designated decedent's health care agent on a durable power of attorney for health care and he was being paid to take care of decedent's personal needs. Further, even if Sheldon is correct, this would not require reversal as the other findings are supported by the evidence.

Decedent became a different person, often apprehensive about leaving her home, nervous, and depressed.

As discussed above, during her last illness, decedent was taken by Sheldon to a hospital far from her home.

Sheldon argues that much of the evidence (particularly that relating to the conditions of decedent's home and decedent's cleanliness) was remote in time, and thus could not support the inference that these conditions still existed. However, Sheldon does not argue that the statute of limitations would have prevented the introduction of the evidence, that the trial court erred in admitting such evidence, or that he objected to the introduction of the evidence based upon the statute of limitations. The trial court would have considered the timeliness of the evidence as one factor in weighing the evidence.

The evidence supports the findings that there was neglect.

E. *There is substantial evidence to support the damages award*.

"General damages, as well as attorney fees and costs, are recoverable if abuse or neglect of an elder or dependent adult is proved by *clear and convincing evidence* and the perpetrator is found guilty of *recklessness, oppression, fraud or malice*." (Ross, Cal. Practice Guide, Probate, *supra,* [¶] 15:284.10*l*, p. 15-78.7, citing Welf. & Inst. Code, § 15657)[19]; *Covenant Care, Inc. v. Superior Court, supra*, 32 Cal.4th at p. ___, fn. 5 [11

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[19] Welfare and Institutions Code section 15657 reads: "Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse as defined in Section 15610.63, neglect as defined in Section 15610.57, or financial abuse as defined in Section 15610.30, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law:

"(a) The court shall award to the plaintiff reasonable attorney's fees and costs. The term 'costs' includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

Cal.Rptr.3d at p. 227, fn. 5.) Damages for pain and suffering are recoverable even though the elder died, however, the maximum recovery allowable is $250,000. (Welf. & Inst. Code, § 15657, subd. (b).) Further, an abuser forfeits his or her property interests and benefits he or she might have otherwise obtained by reason of the elder's death. (Prob. Code, § 259.)

With regard to pain and suffering, as discussed above, evidence was introduced that decedent was depressed, fearful, and apprehensive about leaving her home, as a result of Sheldon's control, domination and decedent's resulting isolation. Decedent effectively was shut off from her family. Decedent was denied medical treatment for her injured knee, prolonging her physical pain and making it difficult for her to move. Decedent was convinced she could not afford basic items. Decedent and her house were kept in deplorable conditions, her home was dark as a result of drawn drapes, and her prized garden destroyed because she was not fit to tend to it. When decedent was hospitalized she was hidden, precluding her from receiving the comfort of her family. This evidence, and the facts delineated in prior sections of this opinion, support the $250,000 award for pain and suffering as it demonstrates recklessness, oppression, and malice.

With regard to the damages for financial abuse, as discussed above, the evidence showed that Sheldon took at least $665,623.60 from decedent's personal accounts, SAL accounts, and trust accounts.

"(b) The limitations imposed by Section 337.34 of the Code of Civil Procedure on the damages recoverable shall not apply. However, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.

"(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney's fees permitted under this section may be imposed against an employer. [Fn. omitted.]"

With regard to punitive damages, the trial court ordered Sheldon to appear for a deposition. At the court-ordered deposition, Sheldon did not bring any financial records. Thereafter, a separate hearing was conducted regarding Sheldon's net worth. Sheldon did not appear, but his deposition testimony was admitted. In this testimony, Sheldon admitted he had sold all or most of the trust property, and all or most of his property, including the Kenwood Street and Edison Boulevard Street residences. The testimony revealed that Sheldon had sold properties totaling more than $1 million, apparently in an attempt to avoid paying any potential adverse judgment. It is disingenuous for Sheldon to argue that "there was no evidence that [Sheldon] had the monies from [the] sales." This evidence supports the trial court's award of $50,000 in punitive damages.

Sheldon suggests on appeal that the punitive damages award was improper because it was not based upon his *net worth.* Sheldon's lack of cooperation precludes him from making this argument. An abuser cannot refuse to produce financial records and then suggest that the opposing party did not establish net worth. (*Mike Davidon Co. v. Issod* (2000) 78 Cal.App.4th 597, 608-609 [defendant's failure to obey court order to produce records estopped from objecting to lack of such evidence].)[20]

Lynelle had brought a claim for undue influence in connection with the trust amendment. The trial court found insufficient evidence to support this allegation. Lynelle has not contested this finding.

There was substantial evidence to support the damage awards.

F. *There were no procedural barriers to the punitive damages award.*

Sheldon contends the one judgment rule and the automatic stay entered upon the filing of a notice of appeal preclude the issuance of the punitive damages award. This contention is not persuasive.

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20 Sheldon does not contend that the trial court improperly disinherited him. (Prob. Code, § 259.) Sheldon does not dispute that awards for attorney fees and costs were appropriate.

1. *Additional facts.*

As stated above, the trial was bifurcated. After the first part of the trial, the trial court issued an intended decision on May 13, 2002, finding by clear and convincing evidence, that Sheldon was liable of elder abuse. The intended decision determined the amount of damages for pain and suffering and for financial abuse. The intended decision also stated that the issues of attorney fees, and punitive damages would be determined upon further proof, the later to be based upon Sheldon's worth. Thereafter, the trial court issued a statement of decision, in which it was stated that because there was clear and convincing evidence of neglect, isolation, and financial abuse, and because Sheldon acted with recklessness, oppression, fraud, and malice, Lynelle was entitled to attorney fees to be "established by motion and supporting declarations." Additionally, because of these findings, Lynelle was entitled to punitive damages to be ascertain "[u]pon a showing of Sheldon's net worth."

On May 28, 2002, a judgment after court trial was entered. It recited the $665,623 award for financial abuse, the $250,000 award for pain and suffering, and stated that Sheldon was disinherited. The judgment also stated that "Sheldon Lowrie shall pay punitive damages to Lynelle Goodreau in the amount of $ _____; [¶] . . . Sheldon Lowrie shall pay to Lynelle Goodreau the sum of $ _____ as and for attorney's fees; and [¶] . . . Sheldon Lowrie shall pay to Lynelle Goodreau the sum of $ _____ as and for costs."

On June 3, 2002, Sheldon filed a notice of appeal from the May 28, 2002 judgment.

Sheldon's deposition was taken pursuant to an order of the court on the issue of his net worth. On October 3, 2002, the trial court conducted a hearing on the issues of punitive damages, attorney fees and costs. Sheldon failed to appear. A statement of decision (re: punitive damages) was filed on November 21, 2002. In the statement of decision, the trial court stated that the "second phase of the trial" was heard on October 3, 2002. The trial court found that Sheldon had liquidated virtually all of his assets and the

trust assets prior to the completion of the trial, so they would be unavailable to Lynelle. The trial court made additional findings on the issue of punitive damages and ordered "the clerk to modify the judgment filed and entered May 28, 2002, nunc pro tunc as of May 28, 2002, by adding $50,000 for punitive damages in the space provided for . . . ."

Sheldon did not file a second notice of appeal.

2. *Discussion.*

These facts demonstrate that the trial was bifurcated -- the first phase considered the issues of liability and compensatory damages, and the second phase considered the issues of the amount of attorney fees, costs and punitive damages. The May 13, 2002, intended decision and the May 28, 2002, statement of decision both stated that additional proceedings would be conducted. The May 28, 2002, judgment left blank spaces for the amounts of attorney fees, costs, and punitive damages. Thus, the May 28, 2002, judgment was intended to be interlocutory and the June 3, 2002, notice of appeal premature. The trial court had the jurisdiction to proceed with the second phase of the trial to address punitive damages. (Compare with, *Laidlaw Waste Systems, Inc. v. Bay Cities Services, Inc.* (1996) 43 Cal.App.4th 630, 641 [appeal divested trial court of jurisdiction to enter amended judgment]; *Michael v. Aetna Life & Casualty Ins. Co.* (2001) 88 Cal.App.4th 925, 932-933 [trial court vacates arbitration award, notice of appeal filed, and thereafter trial court grants motion to appoint new appraiser; trial court had no jurisdiction to appoint a different appraiser after notice of appeal filed].)[21]

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[21] Sheldon raises another procedural argument. He contends Lynelle could not proceed with this lawsuit because she did not file an affidavit or declaration as required under a provision of the survival statutes, Code of Civil Procedure section 377.32. The document required must be signed under penalty of perjury and must attest to a number of statements relating to the decedent, the decedent's estate, and if the declarant is the decedent's successor in interest or authorized to act on behalf of the decedent's successor in interest. Also, a certified copy of the decedent's death certificate must be attached to the declaration.

IV

DISPOSITION

The judgment is affirmed. Sheldon Lowrie is to pay all costs on appeal.

CERTIFIED FOR PARTIAL PUBLICATION

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.

Sheldon claims Lynelle could not pursue this case because she did not comply with the mandates of Code of Civil Procedure section 377.32. However, Sheldon has not stated in his briefs that in the trial court he objected on this ground. Further, Sheldon has not demonstrated how he was harmed by any noncompliance.

Sheldon also argues there was error because the trial court did not grant a petition. (Welf. & Inst. Code, § 15657.3, subd. (d) [upon petition right of action transferred].) Sheldon does not demonstrate that he objected in the trial court to any such error. Further, on appeal he has demonstrated how any lack of compliance harmed him.